

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JUSTAN DANIEL ADAMS,)
)
Plaintiff,)
)
v.) Civil No. 09-304-B-W
)
STATE OF MAINE,)
)
Defendant.)

**ORDER VACATING JUDGMENT, GRANTING LEAVE TO FILE LATE OBJECTION,
AND AFFIRMING RECOMMENDED DECISION OVER OBJECTION**

On July 10, 2009, Justan Daniel Adams filed a civil rights action against the state of Maine, and the Penobscot County Jail, and on August 6, 2009, he filed an amended complaint. *Compl.* (Docket # 1); *Am. Compl.* (Docket # 7). On July 13, 2009, the Magistrate Judge issued a report and recommended decision in which she ordered Mr. Adams to pay a filing fee of \$350.00 by August 3, 2009, and warned him that if he failed to do so, the cause of action would be dismissed. *Recommended Dec.* (Docket # 3). Mr. Adams failed to comply with the court order and on August 12, 2009, the Court affirmed the Recommended Decision and ordered the case dismissed for lack of prosecution. *Order Affirming the Recommended Dec. of the Magistrate Judge* (Docket # 8). Judgment followed shortly. *J.* (Docket # 9). Directly after the Court entered judgment, on August 12, 2009, Mr. Adams filed an objection to the Recommended Decision. *Ob. to Recommended Dec.* (Docket # 10). In the objection, Mr. Adams explained that he did not receive the Recommended Decision until August 5, two days after the due date for the filing fee. *Id.*

The Court agrees that because Mr. Adams did not receive the Recommended Decision until after the objection period had run, it is inappropriate to treat his objection to the decision as

having been waived. The Court therefore interprets his objection as a motion for relief from judgment under Rule 60(b)(1), and GRANTS the motion. The Court hereby ORDERS the Judgment VACATED.

The Court next turns to Mr. Adams' objection to determine whether it states a viable basis to contest the Recommended Decision. It does not. The Magistrate Judge specified that if Mr. Adams wished to proceed with his Complaint, he had to deposit a filing fee in the amount of \$350.00 with the Court by August 3, 2009. *Recommended Dec.* at 1. Although Mr. Adams has objected to the Recommended Decision, he has not filed the required filing fee and has not asked for an extension of time within which to file the fee. Accordingly, Mr. Adams' objection to the Recommended Decision is OVERRULED and the Court AFFIRMS the Recommended Decision over objection. Plaintiff having failed to pay the \$350.00 filing fee by August 3, 2009 and having failed to request an extension of time within which to pay the fee, it is hereby ORDERED that this matter is DISMISSED for lack of prosecution.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Dated this 21st day of August, 2009